273.

SUPREME COURT OF THE UNITED STATES.

No. 47.

DE LAFAYETTE WILCOX, AS PLAINTIFF IN ERROR,

VERSUS

JOHN JACKSON, ON THE DEMISE OF MURRAY McCONNEL.

ERROR TO THE SUPERIOR COURT OF THE STATE OF ILLINOIS.

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Know all men by these presents, that we, David J. Baker, Charles Prentice, and Alexander M. Jenkins, are held and firmly bound unto John Jackson, on the demise of Murry McConnel, in the full and just sum of five hundred dollars, to be paid to the said John Jackson, on the demise of Murry McConnel, his certain attorney, executors, admintstrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-first day of July, in the year of our Lord one thousand eight hundred and thirty-seven.

Whereas, lately at a supreme court of the State of Illinois, in a suit depending in said court, between the said John Jackson, on the demise of Murry McConnel, plaintiff in error, and De La Fayette Wilcox, defendant in error, judgment was rendered against the said De La Fayette Wilcox, and the said De La Fayette Wilcox having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said John Jackson, on the demise of Murry McConnel, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of August next.

Now the condition of the above obligation is such, that if the said De La Fayette Wilcox shall prosecute his suit to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

DAVID J. BAKER. [SEAL.]
CHAS. PRENTICE. [SEAL.]
A. M. JENKINS. [SEAL.]

Sealed and delivered in presence of
JOHN REYNOLDS.

Approved by
WM. WILSON,
Chief Justice of the Supreme Court of the State of Illinois.

The United States of America to John Jackson, on the demise of Murry McConnel, greeting: you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of August next, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Illinois, wherein De La Fayette Wilcox is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable William Wilson, chief justice of the State of Illinois, this twenty-first day of July, in the year of our Lord one thousand eight hundred and thirty-seven.

WM. WILSON,
Chief Justice of the Supreme Court of the State of Illinois.

On this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and thirty-seven, personally appeared William Thomas before me, the subscriber, one of the justices of the supreme court of the State of Illinois, and makes oath that he delivered a true copy of the within citation to Murry McConnel, the lessor and attorney of John Jackson, the defendant in error, named in said citation, on the twenty-fifth day of July in the year aforesaid.

SAML. D. LOCKWOOD.

On this twenty-first day of July, in the year of our Lord one thousand eight hundred and thirty-seven, personally appeared David J. Baker before me, the subscriber, chief justice of the supreme court of the State of Illinois, and makes oath that he delivered a true copy of the within citation to James M. Duncan, Esquire, clerk of said court, to be deposited in his office on this day.

WM. WILSON.

UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the honorable the judges of the supreme court of the State of Illinois, greeting: because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court of the State of Illinois, before you, or some of you, being the highest court of law or equity of the said State, in which a decision could be had in the said suit between John Jackson, on the demise of Murry McConnel, plaintiff in error, and De La Fayette Wilcox, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said De La Fayette Wilcox, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice be done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and

openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness, the honorable Roger B. Taney, chief justice of the said Supreme Court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-seven.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by
WM. WILSON,
Chief Justice of the Supreme Court of the State of Illinois.

At a Supreme Court began and held at Vandalia, on Monday, the fifth day of June, A. D. 1837, and continued until Friday, 21st July, 1837.

Present: The Hon. William Wilson, Chief Justice; the Hon. Samuel D. Lockwood, Associate Justice; the Hon. Thomas C. Brown, Associate Justice; the Hon. Th. W. Smith, Associate Justice.

JOHN JACKSON on the demise of M. MCCONNELL
vs.
DE. LA FAYETTE WILCOX.
} Error to Cook Circuit Court.

Be it remembered, that heretofore, to wit, on Tuesday, the twenty-fourth of January, of the term of December, of said supreme court, came Murray McConnell, the attorney for the plantiff in the above entitled cause, and moves the court for leave to file the record in this cause; and it is granted.

Whereupon, the said Marray McConnel filed in open court, the record aforesaid, which record is in the words and figures following, to wit:

STATE OF ILLINOIS—*County of Cook.* *Cook circuit court.*

JOHN JACKSON ex. dem.
MURRAY MCCONNEL
vs.
JOHN DOE cas. ej.
D. L. WILCOX, tenant.

On the 29th day of February, in the year of our Lord one thousand eight hundred and thirty-six, came the plantiff, by Murray McCon-

nel, his attorney, and filed, in the office of the clerk of the circuit court, in and for the said county of Cook, his declaration; which is in the words and figures, following to wit;

STATE OF ILLINOIS—*Cook County. Circuit Court.*

May term of said court, in the year of our Lord 1836:

John Jackson complains of John Doe in custody, &c. in a plea of trespass, &c. for that, heretofore, to wit, on the twenty-eight day of February, 1836, Murray McConnel demised to the said John Jackson, for and during the term of twenty years, from the date aforesaid, all that piece and pieces, and parcels of land, tenements, and appurtenances, situate in the county and circuit aforesaid, and described and known as all of block number three, in Beaubieu's addition to the town of Chicago, as appears upon the record of the plat of said addition, recorded in the recorder's office of said county, (except lots number seven and ten in said block) together with all the houses, improvements and appurtenances thereof. By virtue of which, said demise, he, the said John Jackson, entered into the said tenements, with the appurtenances, and was thereof possessed for the said term, so to him, thereof granted, and he the said John Jackson, being so, thereof possessed, the said John Doe afterwards, to wit, on the day and year last aforesaid, with force and arms, &c. entered into the tenements, lands and premises aforesaid, of which he, the said John Jackson, was so interested, in manner and for the term aforesaid, which is not yet expired, and then, and there, ejected him, the said John Jackson, out of his said land and premises; and other wrongs to the said John Jackson, he the said John Doe did, against the peace and dignity of the People of the State of Illinois, and to the damage of the said John Jackson ten thousand dollars, and therefore he sues, &c.

M. McCONNEL,
Atty. for plff.

COOK COUNTY, *Illinois, February* 29, 1836.

SIR: I am informed that you are in possession of the lands and premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued as casual ejector only, and having no claim or title to the same, do advise you to appear at the next term of the Cook county circuit court, to be holden at the town of Chicago, on the fourth Monday of the month of May next, and by some attorney of said court, and by a rule of said court cause yourself to be entered defendant in my stead, otherwise I shall suffer judgment to be entered against me by default, and you will be turned out of posssession of said premises, &c.

Yours, &c.

JOHN DOE.

M. DE LAFAYETTE WILCOX.

STATE OF ILLINOIS—*Cook County, ss.*

The within and foregoing declaration in ejectment, and notice appended thereto, was served upon the said De La Fayette Wilcox, by leaving a correct copy of said declaration and notice in his possession, on the twenty-ninth day of February, 1836.

Given under my hand, as sheriff of the county aforesaid, this 29th day of February, A. D. 1836.

S. W. SHERMAN,
Sheriff Cook county, Illinois.

STATE OF ILLINOIS—*Cook County. Circuit Court, May Term,* 1836.

The clerk of the circuit court of Cook county, will file the foregoing declaration in ejectment, and docket the suit at the same time, in the mannner and form as appears upon the back thereof.

M. McCONNEL,
Atty. for plff.

JOHN JACKSON, ex. dem. &c.
vs.
JOHN DOE, casl. ejet. &c.

The sheriff of Cook county will serve this declaration in ejectment, by leaving a copy of the same, and the notice thereto appended, with D. Wilcox, the tenant in possession of the premises, and to whom the said notice is directed, and make a return thereof, hereupon, &c.

M. McCONNEL,
Atty. for plff.

February 29th, 1836.

At a circuit court began and held at the court house, in Chicago, on Monday the 23d day of May, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the United States of America the sixtieth, before the Hon. Thomas Ford, Judge of the sixth judicial circuit, of the of State of Illinois, and presiding judge of the Cook circuit court.

Monday, May 23, 1836,

JOHN JACKSON ex. demise
MURRAY MCCONNEL
v.
JOHN DOE, tenant, &c.
DE LA FAYETTE WILCOX, in possession.
} Ejectment.

This day came the plantiff, by M. McConnel, his attorney, and moved the court to grant an order directing a survey of the premises in question, to the end that the boundaries thereof may be certainly ascertained; whereupon, it was ordered, that said motion be continued untill to-morrow morning.

Friday, May 27th, 1836

JOHN JACKSON, ex demise of
MURRAY MCCONNEL
vs.
JOHN DOE
DE LA FAYETTE WILCOX, tenant.
} Ejectment.

This day came David J. Baker and filed his affidavit in this cause, which is in the words and figures following, to wit:

JOHN JACKSON on demise of
MURRAY MCCONNEL,
vs.
JOHN DOE DE LA FAYETTE WILCOX,
tenant in possession.
} In Ejectment.

David J. Baker states, on oath, that he is informed, and believes it to be true, that on or about the 16th of September, 1835, the command of Fort Dearborn was legally devolved on De La Fayette Wilcox, as captain and brevet major in the United States army, and from that period since has been under his command, occupied as a garrison of the United States of America by himself, and the troops of the nation, as a military post, than for many years, to wit, from 1824 to the present time, it was with a very short interval extending from only the year 1830, till 1831, occupied by the troops of the United States, as a garrison or military post; that the ground claimed by the lessor of the plaintiff, and described in his declaration, is part and parcel of the ground that has been occupied as aforesaid, and was reserved for military purposes, from and after the year 1824, and as a part of Fort Dearborn, occupied by the troops of the United States, and parcel of the appurtenances thereof, and has been as actually enclosed and occupied by the garrison itself, or as appurtenances thereto belonging; that the alleged trespass and ejectment, if such it can be called, or the possession of the said Wilcox has been that, and is that only of a military commander of said fort; and now, and at the time of said supposed trespass and ejectment, is, and was acting under the authority of the United States aforesaid; that this affiant is attorney for the said United States, for the district of Illinois, and is duly authorized to defend said action of ejectment, and to cause the appearance in behalf of the United States to be entered to said action of ejectment. He states that he has no doubt, all of the facts aforesaid, can be proved on the trial of said action. He therefore prays that the United States be made a party defendant to said action, and permitted to defend the same; and further, this affiant saith not.

DAVID J. BAKER.

Subscribed and sworn to, this 27th May, 1836, in open court.
RICHARD J. HAMILTON, *Clerk.*

And moved the court to permit him, as district attorney of the United States, for the district of Illinois, to enter the United States defendant in the place and stead of the casual ejector, the now defendant, John Doe; which motion was resisted by McConnel and Thomas, counsel for the plaintiff, and was overruled by the court; whereupon, then came De Lafayette Wilcox, by Baker, his counsel, and by consent of the plaintiff enters himself defendant in the place and stead of the said John Doe; and now here, in court, the said plaintiff and the said defendant, Wilcox, filed the following consent rule, and agreed that the same be entered of record in said court, to wit:

It is ordered by the court, by and with the consent of both parties and their attorneys that De Lafayette Wilcox may be made the defendant in the place of the now defendant John Doe, and that he will immediately appear to the plaintiff's action, and shall receive a declaration in ejectment of the tenements in question, and shall immediately plead thereto not guilty; and upon the trial shall confess lease, entry and ouster, and insist upon his title only; and if, upon the trial, the said De Lafayette Wilcox do not confess lease, entry and ouster, and entry and ouster, and insist upon his title only; and if upon the trial, the said De La Fayette Wilcox do not confess lease, by reason thereof, the plaintiff cannot prosecute his writ; then the taxation of costs upon such non. pros. shall cease, and the said De Lafayette Wilcox, shall pay such costs as shall be taxed or adjudged, for such his default in non-performance of this rule, and the judgment shall be entered against the said John Doe, the now casual ejector by default; and it is further ordered, that if upon the trial of the said issue, a judgment shall be given for the said defendant, or if the plaintiff shall not prosecute his writ, upon any other cause than for the not confessing lease entry, and ouster, as aforesaid, then the lessor of the plaintiff shall pay costs, if the plaintiff himself doth not pay them, and a judgment may be rendered against said lessor for the same, and this consent rule shall be entered of record.

M. McCONNEL,
Attorney for Plaintiff.
DAVID J. BAKER,
Attorney for said defendant, De Lafayette Wilcox.

And now comes the said Wilcox, and confesses to have received a declaration in trespass in ejectment in this cause, and now files his plea of not guilty, to which the plaintiff joins issue; which is in the words and figures following, to wit: In the circuit court, in and for the county of Cook.

DE LAFAYETTE WILCOX,
ats.
JOHN JACKSON, on the demise of Murray McConnel.

And the said De La Fayette Wilcox, by David J. Baker his attorney, comes and defends the force and injury, when, &c. and says he

is not guilty of the said supposed trespass and ejectment, above laid to his charge, or of any part thereof, in manner and form as the said John Jackson, hath above thereof complained against him, and of this, he the said De La Fayette Wilcox, puts himself upon the country, &c.

DAVID J. BAKER,
Attorney for said defendant.

And now comes the said plaintiff, by M. McConnel his attorney, and in like manner puts himself upon the country for trial, &c.

M. McCONNEL,
Attorney, &c.

And now came the parties by their attorneys, and by consent, and, on motion of both plaintiff and defendant, it is

Ordered, That a full and complete survey of the south west fractional quarter of section number ten, in township number thirty-nine, north, in range fourteen east, be made by the county surveyor of the county of Cook, and State of Illinois, and that Beaubieu's addition to the town of Chicago in said county, be also surveyed, being the tract of land of which the premises in question are parts, and that said several blocks and lots of land in said addition, be fully and completely surveyed, and the corners and boundaries thereof, be properly marked and designated in the ordinary manner of laying out town lots, where from the nature of the improvements upon said land, the same can be done, and that he make an account, and return of his fees, together with his report of the survey of said tract of land, to the next term of this court; whereupon, upon motion of the defendant Wilcox, it is

Ordered, That this cause be continued to the next term of this court.

At a circuit court began and held at the court house in Chicago, on Monday the 3d day of October, in the year of our Lord one thousand eight hundred and thirty-six, and of the independence of the United States of America the sixty-first, before the honorable Thomas Ford, judge of the sixth judicial circuit of the State of Illinois, and presiding judge of the Cook circuit court.

Saturday, October 8th 1836.

JOHN JACKSON ex demise MURRAY MCCONNEL *v.* JOHN DOE, ejector, DE LA FAYETTE WILCOX tenant.	Ejectment.

This day came the plaintiff by Murray McConnel, his attorney, and the said De La Fayette Wilcox defendant, by David J. Baker his attorney, and this cause is submitted to the court for trial, on an agreed statement of facts filed and made a part of the records of

this court. (which is in the words and figures following to wit) In the circuit court, in and for the State of Illinois in the county of Cook, *ss.*

JOHN JACKSON, on the demise of MURRAY MCCONNEL, *against* DE LA FAYETTE WILCOX.	Action of Ejectment.

The following statement of facts, is agreed upon by, and between the parties, plaintiff, and defendant, by their attorneys, in this case; and said agreement of facts is to be taken and considered by the court as a special verdict, returned into the court by a jury empannelled to try the cause.

The premises sued for, are part of fractional section 10, in township 39, north of range 14, east of the 3d principal meridian, in the county of Cook, and State of Illinois, and embrace the military post called Fort Dearborn, of which post at the time of the bringing of this suit, and the service of the declaration therein, the said defendant, De La Fayette Wilcox, was in the possession of the said premises, and was the commanding officer under the authority of the United States, which post was established by the United States, in 1804, and was thereafter occupied by the troops of the United States till August the 16th 1812, when the troops were massacred, and the post taken by the enemies of the country.

It was re-occupied by the troops on the 4th of July, 1816, in which year the United States caused to be built, upon said fractional section, No. 10, T. 39 N. R. 14 east, some factory houses for the use of the Indian department. Said troops continued to occupy said post until the month of May, 1823, when it was evacuated by order of the Government, and was left in possession of Dr. A. Wolcott, Indian agent at Chicago.

On the 19th of August, in the year 1828, said military post was again occupied by the troops of the Government, acting under the order of the Secretary of War, as one of the military posts of the United States.

Said post was again evacuated by the troops of the Government in the month of May, 1831, though the Government never gave up the possession of said military post, called Fort Dearborn, but left the same in the possession of one Oliver Newberry, who authorized George Dole to take and keep the same in repair; which said Dole accordingly did.

Said post was again occupied by the troops of the Government in June, 1832, under the command of Major Whistler, an officer in the army of the United States. At the time Major Whistler took possession, being at the time of the war with the Sock and Fox Indians, several hundred persons were in the fort for security against said Indians.

Said military post has been occupied by the troops, and was generally known at Chicago, to be so occupied from that date up to the commencement of this suit, and is still used for that purpose.

When said military post was evacuated in 1831, the quarter-master at the post, acting under orders, sold a greater part of the moveable property, in and about said garrison, belonging to the Government, but sold none of the buildings belonging to said military post.

In the year 1817, John Baptist Beaubieu bought of one John Dean, who was an army contractor at said post, a house built upon said land, by the said Dean, and gave him therefor one thousand dollars; attached to said house was an enclosure used and occupied by said Dean, as a garden and field, and said Beaubieu then took possession of said house and enclosure, and continued in possession, cultivating a part of said enclosure every year, from the year 1817 to the 17th of June, 1836.

In 1823, the factory houses built at said post upon said tract of land, were by order of the Secretary of the Treasury sold, and Capt. Henry Whiting became the purchaser thereof. In the same year said Whiting sold said improvements to the American Fur Company, and said company for the sum of five hundred dollars sold to said Beaubieu, who took possession thereof and continued to occupy the same, together with a part of said quarter-section of land, to the date of the commencement of this suit. Said Beanbieu continued to occupy said houses and enclosure upon said land, and to cultivate a part of said land unmolested and undisturbed by any person whatever, from the said year 1817, up to the day of the commencement of this suit.

The land in question was surveyed by the Government in the year 1821.

Since the said military post was re-occupied by the United States troops in 1832, as before strted, to wit, before the first day of May, 1834, the United States built a light house upon part of said land, and have kept constantly enclosed and cultivated for the use of the said garrison, at least twenty acres of said land. Said United States troops by order and consent of the Government, have also used and occupied various other Government lands near and adjoining said quarter section of land.

On the 2d of September, 1824, Dr. A. Woclott, Indian agent, then stationed at Chicago, wrote the following letter to the Secretary of War of the United States, to wit:

FORT DEARBORN, *Chicago, Sept.* 2, 1824.

SIR: I have the honor to suggest to your consideration the propriety of making a reservation of this post and the fraction on which it is situated for the use of this agency. It is very convenient for that purpose, as the quarters afford sufficient accommodation for all the persons in the employ of the agency, and the store houses are safe and commodious places for the provisions and other property

that may be in charge of the agent. The buildings and other property, by being in possession of a public officer, will be preserved for public use, should it ever be necessary to occupy them again with a military force.

As to the size of the fraction I am not certain, but I think it contains about sixty acres, a considerable greater tract than that is under fence; but that would be abundantly sufficient for the use of the agency, and contains all the buildings attached to the Fort, such as a mill, barn, stable, &c. which it would be desirable to preserve.

I have the honor to be, &c.

(Signed) ALEXANDER WOLCOTT, Jun.
Indian Agent.

HON. J. C. CALHOUN, *Secretary of War.*

Which letter John C. Calhoun, then Secretary of War of the United States, on the 30th of September, 1824, enclosed with the following note to George Graham, Esq. Commissioner of the General Land office of the United States, to wit:

DEPARTMENT OF WAR, *30th Sept.* 1824.

SIR: I enclose herewith a copy of a letter from Dr. Wolcott, Indian agent at Chicago, and request you will direct a reservation to be made for the use of the Indian department at that post, agreeably to his suggestions. I have the honor to be, &c.

(Signed) J. C. CALHOUN.

GEORGE GRAHAM, Esq.
Commissioner of the General Land Office, Treasury Department.

And thereupon, on the first day of October, 1824, George Graham, then Commisioner as aforesaid, addressed a letter in reply to the Secretary of War, at the same time subjoining to the said letter of the said Secretary of War, this note, to wit:

"Answered the first of October, 1824, and the frac. Sec. 10, T. 39, N. R. 14 E. *coloured* and *marked* on the map as reserved for military purposes."

Said letter in reply, is as follows, to wit:

GENERAL LAND OFFICE, *1st of October*, 1824.

SIR: In compliance with your request, I have directed that the fractional section 10, Township 39, N. R. 14 E. containining 57.50 acres, and within which Fort Dearbern is situated, should be reserved from sale for military purposes. I am, &c.

(Signed) GEORGE GRAHAM.

HON. J. C. CALHOUN.
Secretary of War.

Which said fractional section, mentioned in the foregoing letter of George Graham, embraces the premises sued for, and said Fort Dearborn, occupied by said United States as aforesaid.

After the writing and receipt of the letters aforesaid, to wit, on the 29th day of May, 1830, Congress passed a law granting the right of pre-emption upon the public lands to every person who cultivated any part of a quarter section of said land in 1829, and was in the actual possession thereof on the 29th day of May, 1830; but which pre-emption right does not extend to any land which is reserved from sale by act of Congress, or by order of the President, or which may have neen appropriated for any purpose whatsoever, or for the use of the United States, or either of the States in which any of the public lands may be situated. Said Beaubieu having cultivated a part of said F. section in 1829, and having been in possession of a part so cultivated on the 29th day of May, 1830, on the 7th day of May, 1831, made application to the register and receiver of the United States land office at Palestine in Illinois, and offered to prove a pre-emption upon said land, and purchase the same at private sale, under said pre-emption law, which claim of pre-emption upon said land was not by said register and receiver at Palestine, allowed to the said Beaubieu.

One Robert Kenzie, on the said 7th day of May, 1831, made application to the said register and receiver, to be allowed to enter at private sale a part of the same fractional section 10; and the said claim by the said register and receiver was then passed and allowed, and the said Robert Kenzie was then permitted to enter at private sale, under said pre-emption law, the north fraction of said fractional section ten.

After the application of the said Beaubieu to the register and receiver at Palestine as aforesaid, to wit, on the 7th and 12th of May, 1831, Joseph Kitchell, then register of said land office, addressed letters to Elijah Hayward, Esq. then Commissioner of the General Land Office of the United States, informing him of the said application of the said Beaubieu to enter said S. W. F. section 10, town 39, north of range 14 east, under said pre-emption act, and on the 2d of November, 1831, said Beaubieu addressed a letter to the said Hayward, Commissioner, &c. stating that in the month of May preceeding he had filed in the office at Palestine aforesaid, proof of his right of pre-emption to said land, and insisting that he was entitled to have said claim allowed; and in answer thereto was informed by said Commissioner by letter, dated the 2d of February, 1832, that said south-west quarter of said fractional section ten T. 39, N. R. 14 E. was reserved for military purposes. On the 1st of October, 1824, several other persons, in behalf of said Beaubieu, after his application as aforesaid, prior to the said 2d of February, 1832, made inquiry by letter of said Commissioner, touching the same, and were informed by said Commissioner that said tract of land had been reserved for military purposes and said Beaubieu's application as aforesaid was rejected.

Afterwards, to wit, on the 19th day of June, 1834, Congress passed an act to revive said pre-emption law of the 29th of May, 1830,

by the first section of which act is provided that every settler or occupant of the public lands prior to the passage of this act, who is now in possession, and cultivated any part thereof in 1833, shall be entitled to all the benefits and privileges of the act entitled an act to grant pre-emption rights to settlers on public lands, approved 29th May, 1830; and said act is hereby revived, and shall continue in force two years from the passage of this act and no longer, and the said Beaubieu having cultivated a part of said fractional quarter of section ten in 1833, and having been in the actual possession and occupancy of the part, so by him cultivated, on the said 19th day of June, 1834, the date of the passage of said last recited law, did in the month of July, 1834, apply to the register and receiver of the United States land office at Danville, in Illinois, for leave to prove a pre-emption and enter said fractional quarter under said last recited act; which application and claim of said Beaubieu was rejected by the said register and receiver at Danville aforesaid, who informed said Beaubieu that said land was reserved for military purposes.

After the writing of the letters by Dr. Wolcott, Indian agent, and J. C. Calhoun, Secretary of War, and George Graham, Commissioner of the General Land Office, herein before referred to and set forth, to wit, on the 26th day of June, 1834, Congress by a law, approved upon that day, created two additional land districts in Illinois—one called northwest and the other the northeast land districts of the State of Illinois, and the last mentioned district includes the land in controversy.

By the 4th section of said act, it is provided that the President shall be authorized, so soon as the survey shall be completed, "to cause to be offered for sale in the manner prescribed by law, all the lands lying in said land district at the land offices, in the respective districts in which the lands so offered is embraced, reserving only section sixteen in each township—the tract reserved for the village of Galena. Such other tracts as have been granted to individuals and the State of Illinois, and such reservation as the President shall deem necessary to retain for military posts, *any law of Congress heretofore existing to the contrary notwithstanding.*"

It is further provided by said act, that there "shall be established in each of said land districts a land office at such time and place as the President may deem necessary," and that a land office was established in said northeast land district before the 1st of May, 1835, which is the land office at Chicago.

After the passage of said act, and after the land office aforesaid was established, the President of the United States on the 12th day of February, 1835, made and published his proclamation directing various lands in said northeastern land district to be sold at said land office at Chicago. Among said lands so proclaimed for sale, is the said fractional section ten, in town 39, N. R. 14 E. unless the same is excepted by the general exception in said proclamation, in the words following, to wit: "*The lands reserved by law for the use of schools and for other purposes will be excluded from the sale.*"

Said lands were directed by said proclamation to be sold at Chicago land office aforesaid, on the 15th day of June, 1835, and before the said 15th day of June, to wit, in the month of April, 1835, the Commissioner of the General Land Office caused to be transmitted to said land office at Chicago, the extended plat of said land in the said proclamation mentioned, marking and coloring upon said plat certain lands to be reserved from sale; but neither said fractional section ten, or any of the divisions thereof, were so marked or colored to be reserved from sale.

At the bottom of said President's proclamation is a general notice requiring all persons who claim the right of pre-emption to any of the lands in the said proclamation mentioned, to appear before the register and receiver of the said land office before the day appointed by said proclamation for the sale of said lands, and prove their pre-emption; and after the said notice the said John Baptist Beaubieu did, on the 28th day of May, 1835, appear before the register and receiver of the said land office at Chicago, there prove to the satisfaction of the said register and receiver that he was entitled to the right of pre-emption to the said south west fractional quarter of fractional section ten, and the said Beaubieu did, on the 28th day of May, 1835, enter and purchase at private sale of the United States and of the register of said land office, the said south west fractional section ten, and then and there paid to the receiver of said land office one dollar and twenty-five cents per acre, in full payment for said land, and obtained from the receiver aforesaid, the following receipt, to wit:

LAND OFFICE AT CHICAGO,
Illinois, 28th May, 1835.

Pre-emption Act, 19th June, 1834.

No. 6.

Received of John Baptist Beaubieu, of Cook County, Illinois, the sum of ninety-four dollars and sixty-one cents, being in full payment for the south west fractional quarter of section No. 10, in township number 39, north of range No. 14, east of the 3rd principal meridian, containing seventy-five acres and sixty-nine hundredths of an acre, at the rate of $1 25 per acre.

(Signed) E. D. TAYLOR, *Receiver.*

$94 61.—Michigan paper.

Said Beaubieu also obtained from the register of said last mentioned land office, a certificate in the words and figuers following, to wit:

LAND OFFICE AT CHICAGO,
Illinois, May 28th, 1835.

No. 6.

It is hereby certified that, in pursuance of law, John Baptist Beaubieu, of Cook county, State of Illinois, on this day purchased of the register of this office the lot or south west fractional quarter of section number ten, in township number thirty-nine, north of Range fourteen east, containing seventy-five and sixty-nine hundredths acres, at the rate of one dollar and twenty-five cents per acre, amounting to ninety-four dollars and seventy-five cents, for which the said John Baptiste Beaubieu has made payment in full as required by law. Now, therefore, be it known, that on the presentation of this certificate to the Commissioner of the General Land Office, the said John Baptist Beaubieu shall be entitled to receive a patent for the lot above described.

(Signed) JAMES WHITLOCK, *Register.*

Pre-emption act 1834.

Which certificate was presented to the Commissioner of the General Land Office and filed in said office.

Afterwards, to wit, on the 4th day of March, 1836, the said register of the said land office at Chicago, made, signed and delivered, to the said Beaubieu his certificate in the words and figures following, to wit:

LAND OFFICE CHICAGO, ILLINOIS.

I, James Whitlock, register of the land office at Chicago, in the State of Illinois, do hereby certify that the John Baptist Beaubieu, of the town of Chicago and State of Illinois, did on the 28th day of May, in the year of our Lord 1835, under and by virtue of an act of Congress, passed on the 19th day of June, 1834, entitled "An act to revive an act granting pre-emption rights to settlers on the public lands, passed the 29th day of May, 1830, prove to the satisfaction of the register and receiver that the said Beaubieu was entitled to the right of pre-emption under said act of the 19th of June, 1834, to the south west fractional quarter of fractional section number ten, in township thirty-nine, north of range number fourteen east, and the said Beaubieu did then enter and purchase of the United States and of the register of said office the said south west fractional quarter of fractional section number ten, in township number thirty-nine, north of range number fourteen east, of the third principal meridian, situated in the district of lands offered for sale at the land office at Chicago aforesaid, and is included in the northeast land district of the State of Illinois, which tract of land contains seventy-five acres and sixty-nine hundredths of an acre; for which tract of land he the said Beaubieu paid the sum of ninety-four dollars and sixty-one cents, being one dollar and twenty-five cents per acre in full payment for the same.

All of which appears by the papers on file in said land office, and by the maps, plats, and records of said office now here.

Given under my hand, as register as aforesaid, at the land office aforesaid, this 4th day of March, in the year of our Lord 1836.

(Signed) JAMES WHITLOCK, *Register.*

Afterwards, to wit, on the 2d day of July, 1836, Congress passed an act, entitled an act to confirm the sales of public lands in certain cases. By the second section of which it is provided that, "in all cases where any entry has been made under the pre-emption laws, pursuant to instructions sent to the register and receiver from the Treasury Department, and the proceedings have been in all other respects fair and regular, such entries and sales are hereby confirmed, and patents shall be issued thereon as in other cases."

It is admitted that the defendant, Wilcox, at the commencement of this suit, and at the time of the service of the declaration in ejectment herein, was in the occupancy and possession of the premises in said declaration mentioned, which is a stockade of pickets, including some wooden buildings in which the soldiers and officers reside, and that the rents and profits of said premises then was, and still is, of the value of three dollars per month.

It is also admitted that said defendant, Wilcox, then was, and still is, an officer in the United States army, and was ordered into possession and command of said military post on said premises, together with the United States troops under his command, by order of the Secretary of War of the United States, and that said Wilcox claims no right of ownership in himself to said land, but is in possession of *of* and occupies the same not in his own right but as an officer of the army of the United States only, in the command of said post, acting under order of the Secretary of War, and of his superior officer, and of the United States.

After the purchase of the said land by the said Beaubieu, as herein before stated, to wit, on the sixth day of February, 1836, he, the said Beaubieu, by deed duly executed, acknowledged and recorded, according to the laws of the said State of Illinois, for and in consideration of the sum of ——— dollars therein expressed, sold and conveyed the said premises, in the declaration mentioned, to Murray McConnel, the lessor of the plaintiff, who purchased with a knowledge that a controversy existed between the said Beaubieu and the Government about said land.

It is further admitted that, after the purchase of the said land by J. B. Beaubieu, as herein before stated, Elijah Hayward, Esq. then Commissioner of the General Land Office, on the 31st of July, 1835, addressed a letter to the register and receiver of the said land office, at Chicago, stating that it had been represented to the Department that the land officers at Chicago had permitted to be sold said southwest fractional section ten, T. 39 N. R. 14 E. including the site of of Fort Dearborn, and informing them that such sale is invalid in consequence of the reservation and appropriation of said fraction for military purposes, since the year 1824, and directing said receiver to

refund to said Beaubieu the amount of the purchase money paid thereon, which said money was tendered by said receiver to said Beaubieu, who refused to receive the same.

On the 23d of January, in the year 1834, Elijah Hayward, then Commissioner of the General Land Office, addressed a note to the Hon. Lewis Cass, then Secretary of War of the United States, enclosing a copy of said letter of the 30th of September, 1824, from the then Secretary of War, Mr. Calhoun, requesting that said tract of land at Chicago, upon which Fort Dearborn was situated, might be reserved for the Indian department, and a copy of the Commissioner, Graham's reply, of the 1st of October, 1824, herein before set forth, stating, that he had directed said land to be reserved for military purposes, and after stating that the tract of land in question, designated as fractional section ten, T. 39 N. R. 14 E. was claimed under the act of Congress, granting pre-emption rights; and said Commissioner Hayward, then requested said Secretary Cass to advise the office whether it was then (to wit, on the 23d of January, 1834) needed by the War Department, and if so, whether it is considered a military reservation, or as a reservation for the use of the Indian department; and on the 21st March, 1834, the said Seeretary of War, addressed a letter in answer to the said inquiry of said Commissioner, informing him that, the reservation at Chicago, alluded to in the letter of the said Commissioner, of the 23d January, 1734, was wanted, and was actually used for military purposes.

It is admitted that various persons, from time to time, have resided upon said fractional quarter section ten, as well as the said Beaubieu, but all those persons were all, in some way connected with the army, and acting under the command of the United States officers; and that one Samuel T. Brady, (who was a settler at said military post) in June, 1835, presented his claim to the right of pre-emption to said land before the register and receiver of the said land office at Chicago, but which claim was rejected by said land officers, or never acted upon by them.

All the facts herein stated are admitted to be true, but they are not admitted to be evidence in the cause, unless the court should be of opinion, upon the hearing of the case, that said facts, or any of them, would be admissible as evidence if offered in evidence by one party and objected to by the other upon the trial of the cause before a jury.

It is agreed that, if the court should be of opinion, upon the hearing of the case, that the law of the case is with the plaintiff, a judgment shall be rendered, that he recover his term aforesaid, and that he have his writ of possession, &c. and that a judgment be rendered against the defendant in favor of the said plaintiff, for the use of the said lessor, for the amount of the said rents and profits in the said plaintiff's declaration mentioned, together with his costs. But should the court be of opinion that the law of the case is with the defendant, then the said plaintiff shall take nothing by his suit, and a jndgment shall be rendered against the lessor of the plaintiff for the cost of this suit.

Each party retains the right to remove said cause to the supreme court of the State of Illinois, by appeal or writ of error.

MURRAY McCONNEL,
Atty. for plff.
DAVID J. BAKER,
Atty. for said defendant.

After hearing arguments of counsel, the court took time to consider of their judgment.

Thursday October 13th, 1836.

JACKSON, on the demise of MURRAY McCONNEL *vs.* DE LAFAYETTE WILCOX. } Ejectment.

This day came again the parties, by their attorneys, and filed the following argument:

JACKSON, on the demise of MURRAY McCONNEL *vs.* DE LA FAYETTE WILCOX. } October term of the Cook circuit court, for the State of Illinois, in the year 1836.

It is agreed by both parties to this suit, *and by both parties to this suit*, and by consent of the court, that the court take the cause under advisement, and that the judge of said court, in vacation, make a written opinion in the same, and cause the same to be filed with the clerk of the circuit court of Cook county, and in said cause and that said opinion so to be filed shall make a part of the record in the cause, and shall be taken as a final judgment therein, in the manner to be directed by said judge in said opinion, which judgment shall be considered as of the present October term of said county, (1836.)

It is further agreed, that so soon as said opinion shall be filed, either party to said suit, by their agent or attorney, may remove said cause and the record thereof to the supreme court, by appeal, without giving bond and security therein, and which, when taken, shall operate as a supersedeas in said cause, and the record of said cause, when presented to the supreme court, shall be filed, and the cause there docketted, and stand for trial at the next December term of said supreme court, (be the same at whatever time it may during said term) in the same manner as if said cause had been decided at this term of said court. This agreement shall be copied into the record in the cause and be considered as a part thereof. This agreement shall be entered of record at this term, in lieu of judgment therein, &c.

M. McCONNEL,
Atty. for plff.
D. J. BAKER,
Atty. for deft.
By B. S. MORRIS,
Atty. for deft. also.

And, on the 7th day of December, A. D. 1836, the Hon. Thomas Ford, judge of the Cook circuit court, within and for the county of Cook, filed in the office of the clerk of said court, his opinion, in accordance with agreement on record; (of which the foregoing is a copy) which said opinion is in the words and figures following, to wit:

STATE OF ILLINOIS—*In the Cook Circuit Court. October Term,* 1836.

JOHN JACKSON, ex. dem.
MURRAY MCCONNEL
vs.
DE LA FAYETTE WILCOX. } Ejectment.

This is an action of ejectment to recover a part of the S. W. fractional qr. sec. 10, 39 N. R. 14, E. on which Fort Dearborn is situated. It is submitted for decision upon an agreed case; the substance of which is as follows:

The defendant, at the commencement of the suit, was in possession of the premises sued for, with soldiers, as an officer of the army and military commander of the U. S. and as such, occupying the fort, (consisting of some wooden buildings and a stockade of pickets, agreed to be worth three dollars per month, rent) by order of the Secretary of the War Department, and by authority of the United States.

The post was first occupied by the troops of the Government in 1804, which occupation was continued until the 16th of August, 1812, when the troops were massacred and the post taken by the public enemy. It was again occupied by the troops, July 4th, 1816, which occupation was continued until May, 1823, when it was evacated by order of Government, and left in possession of Dr. Wolcott, Indian agent, &c.

During this last occupation the United States caused some factory houses to be built for the use of the Indian agency at Chicago.

It was again occupied by troops on the 19th of August, 1828, and again evacuated in May, 1831, and left in possession of Oliver Newberry, who authorized George W. Dole to take and keep possession for the United States. Mr. Dole accordingly took and kept possession. It was again occupied by troops under the command of Major Wistler, in june, 1832, at the time of the war with the Sac Indians, at which time several hundred persons were in the fort for security.

In the year 1817, Col. John Baptist Beaubieu bought a house on the traction above described, from John Dean, an army contractor, for $1000; and also an enclosure and garden attached thereto and occupied by Mr. John Dean. Col. Beaubieu took possession thereof and occupied the same, and cultivated a part of the enclosure and garden in every year from 1817 until the 19th of June, 1836.

In 1823, the factory houses aforesaid were sold by order of the Secretary of the Treasury, and purchased by Whiting. Whiting sold to the American Fur Company, who sold to Beaubieu, who took

possession thereof, and has continued unmolested to occupy the same until the commencement of this suit.

The land in question was surveyed in 1821.

The fort has been occupied by troops ever since the last occupation in 1832, and is still used as a fort. Since the last occupation in 1832, the United States have kept about 20 acres enclosed, which has been cultivated every year, by and for the use of the troops. Also the same troops have, by order of the Government occupied several other portions of the public land in the vicinity of Fort Dearborn. In 1834 the United States caused a light house to be built on a part of said land.

On the 2d of September, 1824, Dr. Wolcott, Indian agent, at Chicago, wrote a letter to John C. Calhoun, then Secretary at War, requesting that the tract in question might be reserved for the use of the *Indian agency* at that place. Which letter on the 30th of September, 1824, was transmitted by Mr. Calhoun to the Commissioner of the General Land Office, with a request that the fractional section 10 aforesaid, might be reserved for the use of the *Indian department.* In answer to this letter, dated the 1st of October, 1824, George Graham, then Commissioner of the General Land Office directed, that whole of fractional section 10 aforesaid, should be reserved for *military* purposes.

Beaubieu cultivated a part of the S. fr. qr. sec. 10 in 1829, and was in actual possession of the part cultivated on the 29th day of May, 1830, the date of the first pre-emption law. He also cultivated a part in 1833, and was in actual possession on the 19th of June, 1834, the date of the last pre-emption law. On the 7th of May, 1831, he made application for a pre-emption to the land office at Palestine, which application was rejected; and he was told by the officers that the fraction was reserved for military purposes. On the same day a pre-emption was granted at the land office to R. Kenzie, for the north fractional qr. of the same section. Afterwards Beaubieu and others, on his behalf, wrote letters of inquiry to the General Land Office concerning his right of pre-emption, and were informed in answer by the Commissioner, that the land claimed had been reserved for military purposes. In the month of June, 1834, Beaubieu applied to the land office at Danville for a pre-emption which was refused, and he was informed by the officers that the tract claimed had been reserved for military purposes.

After the establishment of the land office at Chicogo, in the district of which the land in question is admitted to lie, the President of the United States on the 12th day of February, 1835, issued his proclamation directing various lands in that district to be exposed to sale at Chicago, on the 15th June, 1835, including the south w. fractional qr. sec. 10, unless the same is excepted in the general exception, contained in the proclamation, in these words, "The lands reserved *by law* for the use of schools, *and for other purposes, will be excluded* from *sale.*" Appended to this proclamation is a general notice to all persons claiming pre-emptions to any of the lands direct-

ed to be sold, requiring them to appear before the register and receiver before the day of sale and make proof of their pre-emptions.

In April, 1835, the Commissioner of the General Land transmitted to the land office at Chicago the extended plat of the lands in the proclamation mentioned, marking and coloring therein certain lands to be reserved from sale, but no part of frac. sec. 10 was so marked to be reserved.

On the 28th of May, 1835, Beaubieu applied at the Chicago land office and proved to the satisfaction of the register and receiver that he was entitled to a pre-emption on said land under the act of the 19th of June, 1834. And on the same day entered and purchased by means of his pre-emption, the S. fr. qr. sec. 10 aforesaid, in due form of law by paying the purchase money, and obtaining the receiver's receipt, and register's certificate of entry and purchase, which are submitted in *hace verba* as evidence in the cause.

It is admitted in the agreed case that the defendant Wilcox held possession by virtue of military orders *from the Government*, he being an officer of the army in possession of the fort in command of troops stationed there: and that he claimed no right himself. It is also admitted that McConnel, the lessor of the pltff. before the commencemencement of the suit, duly and formally purchased of Beaubieu so much of said fr. sec. 10 as is now in dispute, including the fort and stockade, with a full notice that a controversy existed between said Beaubieu and the Government.

In Jan. 1334, the Commisioner of the General Land Office address- a letter to the Secretary of War, inquiring whether the said fr. was needed for military purposes, or for the use of the Indian department, and was answered by the Sec'y. of War that it was wanted and then actually used for military purposes.

The acts of Congress relied upon by the parties are, first, the pre-emption laws of 1830 and 1834. Not having those laws before me I cannot state them *verbatim*. But, as they are embodied in the agreed case, they are as follows. The act of 1830 provides, "that every settler and occupier of the public land, who cultivated any part theoeof in 1829, and was in actual possession on the 29th of May, 1830, should be entitled to enter at private sale a quarter section to include his improvements, &c." "The right of pre-emption under this act does not extend to any land which is reserved from sale by act of Congress or by order of the President, or which may have been *appropriated* for any purpose whatever, or for the use of the United States or either of the States in which they may be situated."

The act of 1834 provides, that every settler and occupant of the public land, who cultivated any part thereof in 1833, and was in actual possession on the 19th of June, 1834, should have a similar right to enter at private sale, &c. This act revives the act of 1830, and continues it in force for two years.

2d. The 4th section of the act creating the land office at Chicago, passed on the 26th of June 1834, in these words, "The President shall be authorized, so soon as the survey shall be completed, to cause to be offered for sale in the manner prescribed by law, all the

lands lying in said land district at the land offices in the respective districts in which the lands so offered is embraced, reserving only sec. 16 in each township, the tract reserved for the village of Galena, such other tracts as have been granted to individuals and the State of Illinois, and such reservations as the President *shall deem* necessary to retain for military posts, *any law of Congress heretofore existing to the contrary notwithstanding.*"

3d. The act of Congress, passed July 2, 1836, providing "that in all cases when any entry has been made under the pre-emption laws, pursuant to instructions sent to the register and receiver from the Treasury Department, and the proceedings have been in other respects fair and regular, such entry and sales are hereby confirmed, &c.

4th. The defendant also relies upon all the laws for the sale of the public land, and giving power and regulating the duties of the officers of the Government.

5th. The plaintiff also relies upon the act of assembly of Illinois, passed Jan. 10, 1827, in substance, that the certificate of the register of the entry, or purchase of any tract of land within his district shall be deemed and taken to be evidence of title in the party who made such entry, or purchase, his heirs or assigns, and shall enable such party, his heirs or assigns to recover possession of the land described in the certificate, in any action of ejectment or forcible entry and detainer; unless a better, legal, and paramount title, shall be exhibited for the same.

It is contended in argument by the lessor of the plaintiff, that Beaubieu's entry is valid; that the court cannot inquire behind the entry; and, that therefore, all the facts in the agreed case, touching the reservation are inadmissible evidence that the act of the land officers in allowing the pre-emption is judicial and final; and that the register's certificate is evidence of title to support an action of ejectment. On behalf of the defendant, it is insisted, that the land in question was reserved or appropriated for military purposes, and as such the officers had no jurisdiction to sell it; that their act is therefore void and conveys no sort of title; that the better legal paramount title is in the United States until patent shall issue; that the Government may defend itself in the name of its officer or tenant; and that no action of ejectment can be maintained against the commander of a fort.

It is proper to examine this last objection first: for, if it be well founded, it is useless to inquire further. Independent of all reasoning on this subject, and the monstrous tendency of such a doctrine in a government of laws, it is esteemed only necessary to say, that the question has been decided by the Supreme Coart of the United States, in the case of *Meigs et al.* vs. *McClungs Lessee*, 9 *Cranch* 11. This was an action of ejectment against Meigs, who occupied a fort in in Tennessee as an officer of the army. The objection was made that an action of ejectment would not lie against the commander of a fort.

But the Supreme Court made the cause depend upon the rights of the Government and the individual, and thereupon ruled the objection.

This objection is therefcre dismissed. A question requiring more deliberate inquiry is, whether Beanbieu's entry was valid; and this depends upon the fact whether the fraction was reserved by the President, in his proclamation, for a military post, according to the 4th section of the act creating the Chicago land office.

It is contended by the defendant, that as all lands reserved by law, or by order of the President of the United States, or appropriated for the use of the Government or any state, are excluded from the operation of the pre-emption laws, that therefore the general reservation in the President's proclamation, reserving from sale the 16th section and all lands reserved by law, reaches and embraces this tract, which had thus been uniformly treated by the Government as a reservation for military purposes. We will examine all the questions growing out of this proposition.

1st. Is there any act of of Congress expressly reserving the site of Fort Dearborn? If there is, it has not been exhibited by the attorney for the United States; and it is therefore presumed that there is none. The land was not therefore reserved by statute.

2d. Is there any order of the President, reserving this tract, made previous to the passage of the pre-emption laws? The agreed case contains none such, unless the request of the Secretary at War, and the order of the Commissioner of the General Land Office, may be considered as the act of the President.

That they cannot be so considered with any propriety, appears from the fact that the act of those officers precede in point of time the passage of the pre-emption laws, in which the reservation is supposed to be made. If it had been the intention of Congress to have confirmed the acts of those officers, it appears to me that the exception in the law would have named their act, instead of that of the President.

It is undoubtedly true, that the president may, and does exercise many of the powers with which he is clothed by law, through the agency of inferior officers in the executive department, and therefore, if the law had preceded the act, the reservation might have been legally made by the proper department. For the present, I assume the fact that no previous law expressly authorized any officer of the Government to make military reservations. The power may have been given to establish temporary military posts, but no law, that can be found, authorizes any officer of the Government to make permanent reservations, from sale, in opposition to the general laws providing for and directing the sale of public land.

Neither can it be admitted that the President of the United States, or any subordinate officer, has any inherent executive or other power, not derived from the Constitution or created by law. The United States is a Government differing from all others. Not only is the Government, itself limited in its nature and power, by bounds which it cannot legally transcend, but also its great functionaries and offi-

cers, partaking of the character of the Government which they represent, are as much confined in their powers as the source from whence they derive their authority.

In this respect they differ from the organs of despotic governments, who are clothed with unlimited discretion, who can say to a citizen, come, and he cometh, go, and he goeth.

The people of the United States were too wise, and too jealous of power, to create any such arbitrary authority, and I take it as now being the settled doctrine, that every officer and functionary of the Government is to derive his authority from the Constitution, and the laws made in pursuance thereof, by a fair construction.

After a diligent search, I am unable to find any law of Congress, even remotely applicable to the present case, authorizing any officer of the Government to reserve this fraction from sale. That there is no such law expressly authorizing the Commissioner of the General Land Office to make the reservation, is admitted by the attorney for the United States, who informed the court that such is the opinion of the public officers at Washington. I am equally well satisfied that there is nothing in the general laws for the disposal of the public land, or giving power, or regulating the duties of the public officers, to aid this act of authority; since, as it has been shown above, they have no power but such as is derived from,or created by, the laws and Constitution of the country; they have no inherent power resulting from the nature of their offices merely. From these considerations, I infer that the reservation at the time, and in the manner in which it was made, was not warranted by any law of the United States; that it is not confirmed by the reservation in the pre-emption law, since that act only confirms such reservations as had been made by the President himself, and if it had been the intention of Congress to have confirmed this reservation, they would have truly named and described it, not as the act of the President, but as the act of the Secretary at War, or Commissioner of the General Land Office, or both. For it cannot be said, with any propriety, that an unauthorized act of an inferior officer can be considered as the act of the President. This principle of construction would make the President guilty of every unauthorized tresspass of his inferior agents.

4th. Had the land been appropriated to the use of the United States, or to the use of the State of Illinois? No act of Congress has been shown, making such an appropriation; and it cannot be so considered, unless the officers of the Government, without the warrant of a statute, had power so to dispose of it.

The words "*to appropriate*" *or* APPROPRIATION, are not technical at common law, except only with reference to benefices and tythes.

Appropriation ordinarily means, when applied to things, the application of them to some particular use.

As applied to qualities, it means the claiming of them as belonging to one's self, in an extraordinary if not an exclusive manner; and, in law, the annexing of a benefice to the proper and perpetual use of a religious house. In the United States, when applied to the publi-

money, it means a law by which money is set apart and authorized to be paid out of the Treasury for a particular purpose.

As applied to the public lands, its meaning can only be gathered from the legislation of Congress. It seems to me that when such an appropriation is mentioned in an act of Congress, as for the public use, it must mean an appropriation made by statute, of which there are many known to the law; such as lead mines, and salt springs, which is so much land severed from the general mass in market. Such also are town sites; lands set apart for internal improvements; for missionary purpcses; for education; for military bounties, and even for fortificatious, and even for the use of the Indian department; all of which have the sanction of acts of Congress, or public treaties to authorize them. So far as we can derive any light from the numerous statutes. passed at various times, touching appropriations of the public territory, it is all in favor of the position that appropriations of the public land can only be made by law. It is a great and high power, fit only to be exercised by Congress. The adjudications of courts upon this subject throw but little light upon it. In the case of Jackson vs. Clark, 1st Peters's Reports, 628, the Supreme Court of the United States seem to consider land appropriated by an individual, in the act of purchase; or even when land had been taken up under an order of survey. In this sense it seems to convey an idea the opposite of what is expressed, by the terms vacant lands, or lands not legally subject to entry. In the case of Chotard vs. Pope, 12 Wheaton, 586, the Supreme Court seems to consider an appropriation of the public land, as an act of legislation; at least they speak of it as such. Upon the whole, therefore, I am of opinion, that the tract of land in question had not, at the date of the President's proclamation, been reserved by law, nor by order of the President, nor had it been appropriated, in any admissible and legal sense, to any use whatever. It follows, therefore, that as the President, who was constituted the sole judge of the propriety of retaining it for a military post, saw proper not to do so, that the land was in market, as proclaimed by the President himself, and evidenced by the extended plats furnished to the land offices, on which it was not distinguished from other lands subject to sale, altho' other tracts on the same plat were so marked. Taking this plat in connection with the proclamation, and applying to them the ordinary rules of interpretation, that the expression of one thing is the exclusion of another, it is plain that the President did not think it necessary to retain the land for a military post. But even if a reservation or appropriation had existed, as contended for, it appears to me that the entry should not be invalidated thereby.

According to the argument of the defendant, no law specifically reserved the land in question. The officers at Chicago were not directed by any instructions from Washington that the exception in the pre-emption law applied to the land in question, nor did that fact in any manner appear of record in their office. They were therefore left to find out by evidence *alinude* whether it had been reserved or appropriated or not. In other words, the question of fact was submitted to them to determine, whether it had been reserved in the

same manner that it is submitted to the land officers to determine whether certain lands are mineral lands or not. They therefore, in the absence of law, pointing specifically to the reservation, and in the absence of instructions or facts appearing of record, had jurisdiction, and in granting a pre-emption must necessarily have decided the question of reservation or no reservation. Certainly in the case of lead mines, which are reserved by law, if the land officers had granted pre-emption to lands containing lead ore, the entry could be set aside only for fraud in the party. The principle of law applicable to such acts of land officers, is stated in an opinion of the Attorney General of the U. S. in these words—"The power of ascertaining and deciding on the facts which entitle the party to the right of pre-emption, was exclusively vested in the register and receiver of the land district in which the lands were situated—without any power of revision—elsewhere. In weighing the evidence, and in deciding on its sufficiency, these officers act in a judicial capacity, if it proves to their satisfaction that the settlement and improvement required by law have been made, they must allow the entry; if it fails to satisfy them they must disallow it. The law has not authorized any other officer to reverse or revise their decision, nor can they be compelled to decide according to the dictates of any judgment but their own.

The same principle is held by the Supreme Court of the United States in the case of *Brown et al vs. Jackson.* 7 *Wheaton*, 218, in relation to the decision of a board of commissioners vested with exclusive power to adjudicate without revision or appeal. Indeed the doctrines only recognises the principle of the common law, *law* that where a court or tribunal pronounces a judgement and there is no appeal: the justice or propriety of that judgement cannot be re-adjudicated in another suit or proceeding. It would be *res adjudicata*, and the principle applies as well to special tribunals as to the ordinary courts of justice. *In Polk's lessees v. Wendall*, 5 *Wheaton*, 304, the Supreme Court say "that as to irregularities of the officers of the Government, prior to the grant, the court does not express a doubt but that the Government, and not the individual, must suffer the consequences resulting from them." The same principle is repeated and maintained in the same court in the case of the *United States vs. Arridondo et al.* 6 Peters, 691. In the same case it is held that where power or jurisdiction is delegated to any public officer or tribunal over any subject matter, and its exercise is confined to his or their *discretion*, the acts so done are binding and valid, and individual rights will not be disturbed collatterally for any thing done in the exercise of that discretion, within the authority and power conferred. The only question that can arise between an individual claiming a right under the acts done, and the public, *are power in the officer, and fraud in the party.* All other questions are settled by the decision made or the act done by the tribunal or officer, whether the executive, (1 Cranch, 171) legislative (4 Wheat. 423: 2 Peters, 412: 4 Peters, 563) judicial (11 Mass. 227: 11 S. & R. 429, adopted in 2 Peters 167, 168) or *special* (20 J. R. 739, 741: 2 Don P. Cas. 521) unless an appeal is provided for, or other revision by some appelate or super-

visory tribunal is prescribed by law. Considering therefore, that, if a reservation had existed in the manner stated, that it would have been no bar to the jurisdiction of the officers, the only remaining question on this branch of the case is, can the entry be avoided for fraud in the party?

Fraud in fact, consists in making a false representation, knowing it to be false, or in a wilful concealment of the truth with a similar design; with a design to deceive and cheat. From all that has been said by learned judges and jurists on this subject, it may safely be laid down that, to constitute actual fraud between two or more persons to the prejudice of a third, contrivance and design to injure such third person by depriving him of some right, or otherwise impairing it, must be shown. "Actual fraud is not to be presumed, but ought to be proved by the party who alledges it." If the motives or design of any act may be traced to an honest and legitimate source, equally as to a corrupt one, the former ought to be preferred. "*United States vs. Arridondo, et al.*"

According to these principles, no fraud can be imputed to Col. Beaubieu, in obtaining his pre-emption. He does not appear by any thing in the agreed case, to have made any false representations to the land officers; nor is it stated that he concealed from them that he had, in former times, been informed by the public officers that the land had been reserved for military purposes. No design or contrivance is imputed to him, with the intent to cheat or deceive. No fraud is proved, and none can be presumed.

It therefore follows that this pre-emption is valid, and will be binding on the Government. But a more difficult question still remains to be considered, which is, can the certificate of the register be set up in this action as evidence of a legal title? And if it can, whether a better legal paramount title has not been exhibited?

The act of assembly of Illinois, above recited, is first relied upon by the lessor of the plaintiff. Next, in the M. S. case of Bruner vs. Marlove, decided by the supreme courts of this State, in which they say "that from this act it is manifest that the register's certificate is raised to as high a point of evidence in this form of action as a patent possibly could be. Its effect is to be the same, and the rights derived from it for the purpose of recovering or maintaining possession of lands described in it, are co-extensive with the most formal regularly issued patent. These certificates not only vest the title acquired by purchase from the Government, in the purchaser for the purposes named, but make that title transmissable to the heirs or to the assignee. For any purpose, then, so far as regards the character of these certificates as evidence in an action of ejectment, they must be considered as of high a dignity as patents, and partaking of all their legal attributes. Having settled their character and effect, the rights of the parties under them, must be governed by the same rules of interpretation, as in the case of patents. No reason can exist for an exception."

The court is next referred to numerous decisions of the Supreme Court of the U. S. in which it is held, that evidence to title in land

is to be governed by the *lex loci rei sitae.* That the law of the State where the land lies, is to govern, both as to the form of the remedy and the evidence of the title. Some of those cases will be referred to. Sim's Lessees vs. Irvine. 1 Cond. Rep. 198, in which it was ruled that in Pennsylvania payment of the purchase money of the land, give a legal right of entry, though unaccompanied by patent; and are regarded by the courts of Pennsylvania as evidence of title in ejectment. Why they have been adjudged to give such right, whether from a defect of chancery powers, or for other reasons of policy or justice, is not now material. The right having become established, it must be regarded by the common law courts of the United States in Pennsylvania. In the case of Ross vs. Don, 1 Peters, 656, both parties claimed under patents from the United States, and one of the questions was, whether any outstanding equity could be set up in favor of the junior patentee, in an action of ejectment? The supreme court decided, that although this could not be done at common law, yet as the courts in the State of Mississippi look beyond the grant, and examine the progressive stages of the title from its incipient state, whether by warrant, survey, entry or certificate, until its final consummation in grant, and if found regular in these progressive stages, the grant is held to relate back to the inception of the right, and to have dignity accordingly; that, therefore, the courts of the Union would be governed by the same principle in relation to land in Mississippi. In the case of the United States vs. Crosby, it was held that, where the Government purchased land in Massachusetts, the execution of the deed must conform to the laws of that State, or otherwise be inoperative and void. Many other cases might be cited, where the Government, as a moral being, capable of contracting, has recognised its subjection to the laws of the State, in the absence of an act of Congress.

These decisions evidently grow out of the judiciary act of 1789, in which it is provided, that the laws and statutes of the several States, not repugnant to the laws of the United States, shall be the rule of decision for the federal courts. And are so stated in the decisions themselves.

Now, if the laws of the States, mentioned in those numerous cases, in which they have been recognised, were thought to be in conflict with the laws of the Union—in some of them, no act had been passed by Congress on the point in question—in other cases, the rights of the Government were not in issue; in others again, the question was merely as to the form of the remedy between citizens of the same State. It seems that there can be no doubt but that a State is competent to provide for the trial of equitable rights in a legal action, and also as between its own citizens, to make the register's certificate evidence of title in an action of ejectment, to prevent either of the parties from exhibiting the paramount title of Government; and in some cases, to make laws to bind the Government itself, in the absence of a statute of its own. If the decision of Bruner vs. Marlove, means more than this, it seems not to be warranted by principles of law.

The question then is, has the Government, by virtue of the laws of the Union, any right remaining in the land, after the sale, and if so, can it be exhibited in favor of this defendant?

Congress has no where provided for the issuing of this certificate of the register to the purchaser, as an evidence af his title. But they have provided, that upon the entry of land, the register shall forward his certificate to the General Land Office, upon which a patent is to issue. The act of Congress does not declare the effect of either the certificate or patent as evidence. It will not be argued, that the United States will be aided by the rules of the common law. It is not my intention to approach the vexed question, how far the common law is in force, as a code of the Union, or to inquire whether the Government of the Union, has succeeded to the prerogatives of the Crown of England; and, therefore, to inquire whether the common law principle, that the King can only alien his desmesne by matter of record, applies to the United States in their political capacity. Upon this subject it is sufficient to observe, that the construction contended for, of the law of Illinois, must according to the judiciary act of 1789, be shown to be repugnant to an act of Congress, and not to the common law, before it can be rejected. But, nevertheless, it will be material to inquire what the common law was, when Congress passed the act, authorizing patents to issue. Since, not only the acts of State Legislatures, but also those of Congress, are interpreted with reference to its rules and principles; also, it is well settled, that all words in an act of Congress, which are technical at common law, are to be understood in the sense, in *in* which they are used in that system. The principle equally applies to words of art, borrowed from any other art or science, whether mathematical, mechanical, physical or philosophical. What then is a patent, and what are its incidents at common law? Generally, it means the letter under the great seal; when applied to land, it means the only mode of conveyance, by means of which the King could be divested of his title. A patent under the seal of the United States, or a State, is a conclusive proof of the act of granting by its authority: Patterson vs. Weire, 5 Peters, 241; and being a record, it may be avoided by the Government or second grantee by *scire facias* or bill in equity. King vs. Avery, 2 Term Rep. 515, Dyer 183. In Kentucky and Virginia, when the common law in this respect was *was* adhered to, any thing short of a patent, was considered as insufficient to maintain an action of ejectment. All mere incipient titles were considered inchoate, to be perfected by a writ of mandammus. They were not considered as equitable, but legal, though of imperfect character. They were not considered merely equitable; because the State, not being capable of being coerced to perform the trust, was incapable of being a trustee for the benefit of the *cestury que use.* Their character was therefore legal, to be perfected by the common law writ of mandamus, against the officer whose duty it was to make out the patent. As to what right is acquired by a mere *entry*, the Supreme Court of the United States, say, that the term entry was borrowed from the State of Virginia. Its sense, in the legal nomenclature of

this country, is now as fixed and definite as that of many terms borrowed from the common law. It means that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country, by filing his claim in the office of an officer, known in the legislation of several of the States, by the epithet of an entry-taker, and corresponding in his functions with the register of the land offices under the acts of the United States. In the natural progress of language, the term has been introduced into the laws of the United States. Chotard vs. Pope, 12 Wheaton, 586. The title by entry then, without patent, was merely inceptive at common law; and it appears would be insufficient at common law, to support a legal action. It is undoubtedly true, that upon common law principles, the legal title should prevail in an action of ejectment, upon the same grounds that the legal right prevails in other actions in courts of law. It is so held in those States, in which the principles of the common law are carried into full effect; and the course of proceeding in the action of ejectment are according to those principles. In the States in which these principles prevail, it is held that, in a trial at law, the courts will not look behind or beyond a grant, (synonymous with a patent) to the rights upon which it is founded; nor examine the progressive stages of the title, antecedent to the grant. Ross vs. Don, ex dem. Ballard et al. 1 Peters, 656. Jackson ex dem. Bartlett et al, vs. Henry 10 Johns, 185.

From all these decisions, I deduce the conclusions, 1st, that at common law, the title by entry is imperfect; that without the aid of a statute, an entry merely, was not evidence of title; that it gave no right of entry upon land, and that a patent was the only evidence the courts would look to, to prove that the Government had parted with its title. If these conclusions be correctly drawn, it follows, that as the term patents, as used in the act of Congress by virtue of its technical meaning, is invested with these incidents and consequences, that Congress has as effectually declared the legal effect of a patent and entry as if they had been defined by statute in express terms.

This construction is aided by the fact, that the Constitution gives to Congress power to make all needful rules and regulations for the disposal of the public territory; and also, by the fact that the ordinance of 1787, for the government of northwestern territory, provides, "that none of the new States to be formed out of said territory, shall ever interfere with the primary disposal of the soil by the United States, *nor with any regulations which Congress may adopt to secure the title to the bona fide purchasers.*"—Revised Code of Illinois. Here the State of Illinois is expressly prohibited from passing any law, which could, by construction, be made to defeat or interfere with the titles derived from the Government. In the face of this resolution, it seems impossible to contend, that the State is competent to declare by what evidence the United States shall be bound in the sale of the public land. This ordinance, properly considered, reserved to Congress the exclusive power of defining the time when, the place where, and the manner how, they will dispose of the public

land; and also the kind of evidence of title by which the Government will be bound.

If this reasoning be correct, it follows, that the mere legal title yet remains in the Government; and if it does, it must be paramount to the title by entry. If a patent had issued, after an entry by another person, there seems do doubt but that the title of the patentee, would be paramount to the prior entry. This principle is so well sustained by authorities, that it is needless to quote them; and yet all the title which could be conveyed by patent, must remain in the Government until a patent does issue.

The remaining question is, whether this paramount title can be exhibited by the defendant or by the Governmert in this action?

As the defendant was in possession of the premises by authority of the United States, and holding under them, this establishes the existence of a tenure, or, in other words, the relation of landlord and tenant. The doctrine is well settled that the tenant in all actions of ejectment may defend himself by showing the title of his landlord. But if it should be thought that the statutes of Illinois deprives him of the right to show the paramount title to exist in another, then it is equally well settled that the landlord may defend himself in the name of his tenant. To these points I quote no authority, esteeming them so well settled that they will not be denied by any person at all acquainted with the laws.

It is therefore, my opinion that although Beaubieu's entry is legal in every respect, yet, that he cannot assert his right against the U. States in this form. I therefore direct the following judgment to be entered of record.

This cause having been submitted for decision on an agreed case, and the court after hearing the arguments of the counsel, and being sufficiently advised and informed of and concerning the primises, do find the defendant not guilty of the tresspass and ejectment, in manner and form as charged in the declaration. It is therefore considered by the court that the said defendant have and recover of the said Murray McConnel, lessor of the plaintiff as aforesaid, hir costs about his defence in this behalf expended, and that he have execution therefor, &c.

Origon City, Nov. 21, 1836.

THOMAS FORD,
Judge 6th Judicial District,

JOHN JACKSON, *ex dem.* M. McCONNEL,
vs.
Doe. C. E. D. L. F. WILCOX, *tenant.*

1836. May T. Filing prec. 6¼, dec. 6¼, dockg. cause 21		25
Pltffs. app. 12½, and att. 12½, ord. to Cout. Mo. for survg. 25		50
Sig. to afft. 12 1-2, filg. 6 1-4, filg. cousent rule, 6 1-4		25
Filg. plea 6 1-4, and entg. mo. of dist. atty, 25		31¼

	Deft. app. 12 1-2, and att. 12 1-2, entg. const. rule 75	1 00
	Entrg. ord. for survey 37 1-2, cont. 25	62½
		2 93¾
Oct. T.	Dockg. 12, 1-2, Filg. prec. for subp. for deft. 6 1-4	18¾
	2 subp. $1.00, filg. 12 1-2, copg. order for survey 62 1-2	1 75
	Clerk cert. and seal 50, filing agt. 6 1-4, entering 56	
		2 49
	Agreement of record	75
	Filg. agreed case 6 1-4, Filg. opinion 6 1-4, filg. prec. 6 1-4	81¾
	Judgt. 25, mkg. bill of C. & E. 37 1-2	62½
	Transcript of record 31 90, cert. and seal 50	32 40
	Clerk's costs	39 39¾
	Sheriff's fees:	
	9 Sum. of Dic. 50, 1 mile 6 1-4, return 12 1-2	68¾
	Docket fee	5 00
		$45 08½

STATE OF ILLINOIS, COOK COUNTY.

I, Richd. J. Hamilton, clerk of the circuit court, within and for the county aforesaid, do hereby certify that the foregoing is a true and perfect copy of all the records, papers, and proceedings, on file in my office, relating or pertaining to the above entitled cause. Witness my hand and seal of said court at Chicago in said county, this 15th day of December, A. D. 1836.

[SEAL.] RICH'D. J. HAMILTON,
Clerk.

WEDNESDAY, 25*th January*, 1837.

JACKSON, *ex dem*,
MURRAY MCCONNEL,
vs.
DE LA FAYETTE WILCOX.

This day came the lessor of the plaintiff, by his attorney, and filed his assignment of error in the words and figures following, to wit:

"And the said John Jackson, the plaintiff, above named, by Murray McConnel his attorney, comes and says, that in the record and proceedings aforesaid, and in the giving of the judgment aforesaid, there is manifest error in this, that the said court ought not to have rendered judgment in favor of the said defendant, and against the said plaintiff; and also, there is error in this, that the judgment aforesaid, by the record aforesaid, appear to have been given for the said defendant De La Fayette Wilcox against the said plaintiff: whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff against the said defendant De La Fayatte Wilcox; and the said plaintiff prays that the judgment aforesaid, for the errors aforesaid,

and for other errors, in the said record and proceedings being, may be reversed, annnulled, and altogether, holden for nought, and that he may be restored to all the things which he has lost by occasion of the said judgment.

MURRAY McCONNEL,
Att'y. for said Plaintiff in error.

Monday, 30th January, 1837.

JACKSON on the demise of MURRAY M'CONNELL, vs. DE LA FAYETTE WILCOX. } Appeal from Cook cir. court.

And thereupon, the defendant by David J. Baker, his attorney, comes and files his joinder in error, in the words and figures following to wit:—"And hereupon, the said De La Fayette Wilcox, by David J. Baker, his attorney, comes and says that there is no error either in the record and proceedings aforesaid, or in giving the judgement aforesaid; and he prays that the supreme court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid, assigned for error; and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

DAVID J. BAKER,
Attorney for said defendant De La Fayette Wilcox.

Thursday, February 2d, 1837.

JACKSON, ex dem. MURRAY McCONNEL. *vs.* DE LA FAYETTE WILCOX.

Argument of this case continued by David J. Baker, for defendant, and closed by Murray McConnel, for plaintiff.

Wednesday, February 8th, 1837.

JACKSON, ex dem. MURRAY McCONNEL *vs.* DE LA FAYETTE WILCOX, } Error to Cook circuit court.

Mr. Reese, in his own behalf, read to the court a written argument in the cause; M. McConnel, presented a written argument. The court took time, &c.

Monday, February 20th, 1837.

JACKSON, ex dem. MURRAY McCONNEL *vs.* DE LA FAYETTE WILCOX. } Error to Cook.

Mr. Baker of counsel for defendant, read to the court a written argument in this cause.

JACKSON, ex dem.
MURRAY MCCONNEL
vs.
DE LA FAYETTE WILCOX.

Continued under advisement.

June Term. Friday, July 21st, 1837.

JACKSON, ex dem.
MURRAY MCCONNEL
vs.
DE LA FAYETTE WILCOX.

And now, at this day, came the parties aforesaid, by their attorneys aforesaid, whereupon, all and singular the premises being seen, and now here fully understood by the court, and as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said John Jackson above, for error assigned, being examined and inspected, and mature deliberation being thereupon had, it appears to the said court, now here, that there is great and manifest error in the record and proceedings aforesaid, and in giving the judgment aforesaid, of the said circuit court of the county of Cook.

Therefore, it is considered, that the said judgment, for the errors aforesaid, and other errors in the said record and proceedings being, be reversed, annulled, set aside, and entirely for nothing esteemed; and this court, now proceeding to render such judgment as the circuit court aforesaid, ought to have rendered in the premises, do find and adjudge the said defendant Wilcox, guilty of the trespass and ejectment laid to his charge, in manner and form as the said John Jackson has complained against him, and assess the amount of the counts and profits to three dollars, besides the costs and charges of the said plaintiff; and that, according to the terms of the agreement between the parties to this cause, and upon the law of the case, it is, therefore, considered that the said John Jackson recover his term, *term* aforesaid, yet to come, and unexpired in, and to all of block number three in Beaubieu's addition to the town of Chicago, as appears upon the record of the plat of said addition, recorded in the recorder's office of said county, except lots number seven and ten, in said block, with the appurtenances for the use of the lessor of the said plaintiff, John Jackson, and also his damages in this behalf expended and adjudged, and his cost to be taxed, &c.

JOHN JACKSON, ex dem.
M. McCONNEL
vs.
DE. LA FAYETTE WILCOX.

CLERK'S FEES SUPERIOR COURT. DECEMBER TERM.

Filing record, &c. 20, docketing cause 12½ - -	$	32½
Filing assignment of errors 6¼, entering same 25 -		31¼
Filing joind. in error 6¼, entering same of record 25 -		31¼
Entry, notice of argument 25, same 25, same 25, cont. 12½		87½
Entering judgment and opinion, judg. recorded - -	34	00
Copy of record $45 20, per. copy of opinion of superior court Nov. taken, 12 - - - - -	57	20
	$93	03½
Cert. and seal - -		50
	$93	53

STATE OF ILLINOIS, *ss.*

I, James M. Duncan, clerk of the supreme court of the State of Illinois, certify that the foregoing is a true and correct copy of the record and proceedings in the above entitled cause, as the same appears of record in my office.

Witness my hand and the seal of said court, at Vandalia, in the State aforesaid, this 9th day of December, 1837.

[SEAL.] JAMES M. DUNCAN, *Clerk.*
By JAMES F. OWINGS, *Dep.*